IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No.12959 of 2005(O&M)
Date of Decision:11.07.2006

BALWANT SINGH BRAR

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE S.S.NIJJAR.
HON'BLE MR. JUSTICE S.S.SARON.

Present: Mr. Ajai Tiwari, Advocate, for the petitioner.
Ms. Charu Tuli, Sr. DAG, Punjab and
Ms. Sudeepti Sharma, AAG,Punjab for respondents No.1 & 2.
Mr. H.S.Sran, Advocat for respondents No.3 & 4.
Mr. J.S.Maanipur, Advocate for respondents No.5 & 6.

S.S.SARON,J.

C.M.NO.5329 OF 2006

Sh. D.S.Walia and Sh. Subhash Mahajan are impleaded as respondents No.5 and 6.

C.M. is allowed.

C.W.P.NO.12959 OF 2005

The petitioner being aggrieved against the action of the respondents in not posting him in the regular cadre of Superintending Engineer in the Punjab State Agricultural Marketing Board (respondent no.3)(“Board” for short) has approached this Court seeking directions to restore him in the regular cadre of Superintending Engineer instead of Superintending Engineer against a post shown as a personal measure.

We have heard the learned counsel for the parties.

It is contended by learned counsel for the petitioner that the petitioner was promoted as Superintending Engineer w.e.f. 20.08.1999 and

his promotion was assailed by Shri D.S.Walia-respondent no.5, Executive Engineer (Civil) by way of CWP No.8197 of 1999. The said petition was dismissed by a Division Bench of this Court on 20.12.1999. Thereafter, Shri D.S.Walia and Sh. Subhash Mahajan respondents no.5 and 6 were promoted as Superintending Engineers on 10.08.2005. Therefore, it is contended that despite the admitted position on record that petitioner is senior to Shri D.S.Walia-respondent no.5 and Shri Subhash Mahajan-respondent no.6, he has been kept out of the cadre by treating him as Superintending Engineer against a post which is shown as a personal measure whereas the respondents no. 5 and 6 are posted against regular posts. The promotion of the petitioner having been upheld by a Division Bench of this Court in CWP NO.8197 of 1999, it is contended that the action of the respondent-Board in not giving him a cadre post but keeping him out of the cadre on a post shown as persoinal measure is clearly illegal.

In response, learned counsel appearing for the Board and respondents no.5 and 6 have contended that there are two other officers who are senior to the petitioners and are working as Chief Engineers. They were senior to the petitioner even as Executive Engineers and Superintending Engineers. It is further contended that though the petitioner is senior to Sh. D.S.Walia and Sh. Subhash Mahajan, respondents no.5 and 6, who have been promoted on cadre posts, however, the petitioner has been promoted as Superintending Engineer on the said post as a personal measure, so that he would not have to be reverted to the post of Executive Engineer. Two officers senior to the petitioner were proceeded against by way of disciplinary proceedings which were pending and they were not promoted as Superintending Engineers. After the disciplinary proceedings against the said officers had been dropped, they have been promoted with effect from the due date as

both were senior to the petitioner. As a result of the promotion of the two seniors to the petitioner, the petitioner was liable to be reverted as there was no post of Superintending Engineer for him. Therefore, the petitioner was posted as Superintending Engineer against a post as a personal measure so that he is not reverted.

We have given our thoughtful consideration to the contentions of the learned counsel appearing for the parties.

It is not in dispute that petitioner is senior to respondents no. 5 and 6 and he is presently working against an ex-cadre post of Superintending Engineer in the Board, whereas respondents no.5 and 6 are working on regular posts of Superintending Engineers. The petitioner was promoted as Superintending Engineer w.e.f. 20.08.1999 whereas respondents no.5 and 6 were promoted as Superintending Engineers on 10.08.2005. The promotion of the petitioner was assailed by Shri D.S.Walia-respondent no.5 by way of CWP NO.8197 of 1999 in this Court and the same was upheld as the said civil writ petition was dismissed on 20.12.1999. This Court on two separate occasions vide orders dated 16.02.2006 and 28.03.2006 had sought justification for posting the petitioner against an ex-cadre post. The following orders were passed by this Court on 16.02.2006 and 28.03.2006:-

16.02.2006

"*Admittedly the petitioner is the senior-most Superintending Engineer. However, he has been kept out of the cadre whilst the persons junior to him namely Daljit Singh Walia and Subhash Mahajan are permitted to continue on the posts of Superintending Engineers, within the cadre. Counsel for the respondents argued that the petitioner is an electrical engineer. Therefore, he is being kept on a post which*

involves electrical work. He further submits that the petitioner would be considered for promotion at the appropriate time. The fact that he is posted on an ex-cadre post, does not have any adverse affect on his seniority. Prima facie, we are satisfied that the respondents have failed to justify as to why the senior most Superintending Engineer is posted against the ex-cadre post when persons junior to him are working on the cadre post.

At this stage, Mr. Sran seeks a short adjournment to get instructions from his clients.

Adjourned to 28.03.2006".

28.03.2006

"The case of the petitioner is that he was senior to Sarvshri Daljit Singh Walia and Subhash Mahajan, Superintending Engineers; as such he was entitled to be appointed on a cadre post. This fact has been admitted by the respondents. No specific reply has been given to the fact that as to why the Petitioner though the senior most Superintending Engineer had been posted on an ex-cadre post whereas the persons junior to him had been appointed on cadre posts. In this view of the matter, on the last date of hearing, Mr. H.S.Sran was directed to get instructions on this issue.

Mr. Sran, however, has failed to seek instructions in the matter and stated that he had not received any reply to the communication sent by him.

We accordingly direct respondent Nos.3

and 4 to inform this Court on the next date of hearing as to the stand of the Government on this aspect of the matter.

Adjourned to 25.05.2005.

Copy of the order be given dasti on payment of usual charges".

In response to the above said orders, the respondent Board has filed an affidavit dated 24.05.2006. It is stated that at present there is only one post of Superintending Engineer in the service rules, whereas four Superintending Engineers are working as Superintending Engineers (Civil) and the petitioner is working as Superintending Engineer (Electrical). It is stated that out of the five posts, three posts were sanctioned by the Government from time to time. Two posts including that of Superintending Engineer was upgraded for the petitioner as Superintending Engineer (Electrical) as a personal measure which has been approved/sanctioned by the Government till the time the same was required for the petitioner. Similarly, another post was approved by the Government as a measure personal for Sh. R.J.Singh. It is further stated that all the Superintending Engineers exercise their powers and perform their duties and get other service benefits in accordance with the service rules on the basis of the length of service. The post of Superintending Engineer (Electrical) was created as a persaonal measure for the petitionr so that he is not reverted as Shri S.K.Arora was senior to him in the cadre of Executive Engineer, besides all the consequential benefits were to be given to Sh. S.K.Arora in terms of a judgment passed by this Court. There was no post available to promote Shri S.K.Arora which would have been possible only by reverting the petitioner being junior to Mr. Arora. The petitioner was promoted from the post Executive Engineer (Electrical) to that of Superintending Engineer.Therefore in order to safeguard his promotion, he was adjusted in

Electrical Cadre by creating a post of Superintending Engineer (Electrical) as a personal measure. It is further stated that there is lot of Electrical work in the Board for electrification of marketing yard and for 24 hour supply to villages on urban pattern. Due to heavy work load on electrical side, a post of Superintending Engineer (Electrical) is required. As regard seniority it is stated that the name of the petitioner figures at Sr.No.3 of the seniority list and Sh. S.K.Arora and Sh. R.J.Singh are senior to him and Sh. Daljit Singh Walia and Sh. Subhash Mahajan Superintending Engineers are junior to the petitioner. Besides, as per service rules of the Board, there is only one notified post of Superintending Engineer (Electrical). Therefore, the post of Superintending Engineer which has been sanctioned/approved by the Government would remain in existence till the same is required for the petitioner and he will get the service benefits similar to the other Superintending Engineers. A perusal of the affidavit dated 24.05.2006 shows that no reason whatsoever has been given by the Board as to why the persons, who are junior to the petitioner are working on the regular posts of Superintending Engineer whereas the petitioner is working on an ex-cadre post. The petitioner being senior to respondents no.5 and 6 is entitled to be posted against a regular post of Superintending Engineer. The contention of the learned counsel for the petitioner that the petitioner has not been kept on a regular post so as to deny him consideration for promotion as Chief Engineer in accordance with the service rules applicable is not without basis.

We are of the view that when persons junior to the petitioner are working on regular posts of Superintending Engineers, there is no reason to deny the regular post of Superintending Engineer to the petitioner. The promotion of the petitioner as Superintending Engineer as a personal measure to him was for the reason that he is not reverted in the event that persons senior to him in the cadre of Executive Engineers were

promoted as Superintending Engineers on dropping of the charges in the departmental enquiry pending against them. This was necessary to avoid the reversion of the petitioner at that point of time. However, the position has changed with the promotion and respondents no.5 and 6 as Superintending Engineers on 10.08.2005. As such with the promotion of persons juniors to the petitioner as Superintending Engineers on regular basis, the continuation of the petitioner on an ex-cadre post is not warranted and he is entitled to be posted against a regular cadre post. Therefore, the action of the respondent-Board in not posting the petitioner as Superintending Engineer against a regular cadre post is illegal and discriminatory, which is liable to be set aside.

For the aforesaid reasons, the writ petition is allowed and it is directed that the respondent-Board shall post the petitioner as Superintending Engineer against a cadre post of Superintending Engineer. No costs.

(S.S.NIJJAR)
JUDGE

(S.S.SARON)
JUDGE

11.07.2006
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